

# EXHIBIT A

*to*

*Senate Defendants' Notice of Filing  
Demonstrative Aid for Closing Argument*

***S.C. NAACP v. Alexander et al.***  
**Senate Defendants' Closing Argument**

## **PLAINTIFFS FAILED TO CARRY THEIR “DEMANDING” BURDEN**

**PLAINTIFFS BEAR A “DEMANDING” BURDEN ON THEIR CLAIMS.**  
***Easley v. Cromartie*, 532 U.S. 234, 242 (2001); see also *Miller v. Johnson*, 515 U.S. 900, 915-916 (1995).**

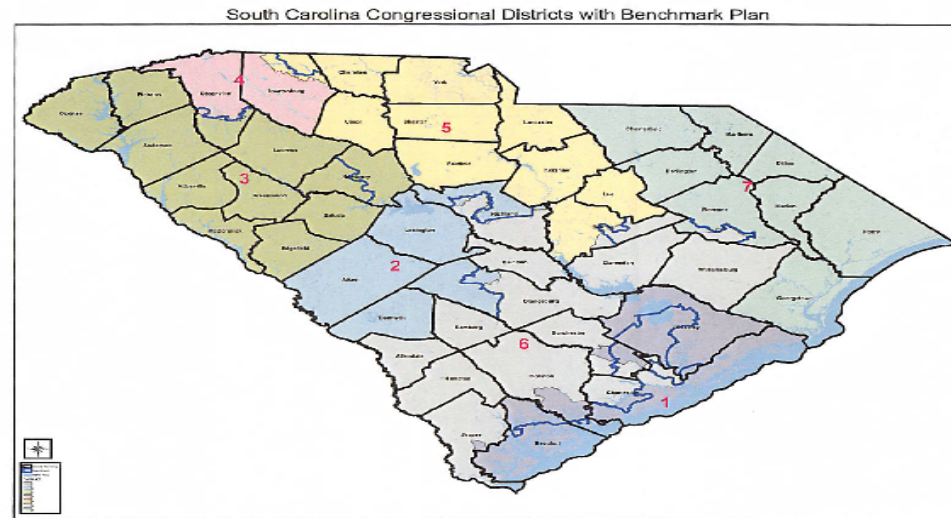
**THEY FAILED TO CARRY IT.**

## **PLAINTIFFS FAILED TO CARRY THEIR “DEMANDING” BURDEN**

### **PLAINTIFFS’ EVIDENCE DOES NOT SHOW:**

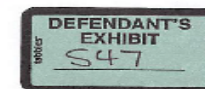
- Subordination of traditional districting principles to race;
- Race rather than politics predominated; or
- Intentional discrimination based on race.

**IN FACT, THE EVIDENCE PROVES TO THE CONTRARY.**



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## WHAT DROVE THE ENACTED PLAN?

- **Complying with traditional districting principles, including:**
  - Preserving district cores
  - Repairing county splits
  - Repairing VTD splits
- **Politics**
- **Accommodating requests from Senate and House members, Congressman Wilson, and Congressman Clyburn**

**NOT RACE!**

# SENATE AND HOUSE GUIDELINES (FOF 65-76, 263-287; PX 175; SX 3)

Adopted September 17, 2021

## 2021 REDISTRICTING GUIDELINES SOUTH CAROLINA SENATE JUDICIAL COMMITTEE REDISTRICTING SUBCOMMITTEE

The South Carolina Senate Judicial Redistricting Subcommittee adopts the 2021 Redistricting Guidelines to aid the Redistricting Subcommittee and interested parties in developing and evaluating redistricting plan proposals. These Guidelines are drawn in part from the guidelines adopted for past redistricting, the 2003 revision of the three-judge court in *Coleman County v. McInnis*, the 2012 revision of the three-judge court in *Richie v. South Carolina*, other court decisions, and input received in public hearings across the State.

### I. REQUIREMENTS OF FEDERAL LAW

#### A. Population equality

##### 1. Legislative districts

The Fourteenth Amendment to the U.S. Constitution requires an honest and good faith effort to construct legislative districts as equally of total population as is practicable. The good faith effort required by the Fourteenth Amendment does not preclude the pursuit of legitimate redistricting policies such as making district compact, respecting local and vision boundaries, preserving the cores of prior districts, and avoiding contests between incumbent legislators. Any redistricting plan with population deviation ranges of greater than ten percent (10%) between the most-populous and least-populous districts is presumptively unconstitutional. The good faith effort required by the Constitution is proven, so that the State may avoid assuming the additional burden under federal law, population deviation of individual districts shall be within plus (+) or minus (-) five percent (5%) of the ideal population and within an overall range of less than ten percent (10%). This guideline does not affect the requirement of an honest and good faith effort to construct districts as nearly of equal population as is practicable.

##### 2. Congressional districts

Under the apportionment clause of Article I, Section 2 of the U.S. Constitution, any apportionment between among congressional districts is more favorable to the party that receives a more than the specified deviation is required by legislative redistricting policies such as making districts compact, respecting political and vision boundaries, preserving the cores of prior districts, and avoiding contests between incumbent representatives. So that the State may avoid assuming this additional burden under federal law, a congressional redistricting plan should not have population deviation greater than one (1) percent.

**B. Voting rights.** A redistricting plan for the General Assembly or Congress must not have the purpose or the effect of diluting minority voting strength and must otherwise comply with Section 2 of the Voting Rights Act as interpreted through *Shaw v. Reno* and its progeny, and the Fourteenth and Fifteenth Amendments to the U.S. Constitution.

**C. Avoidance of racial gerrymandering.** All plans must comply with the Fairness Amendment to the U.S. Constitution, as interpreted by the United States Supreme Court in *Shaw v. Reno* and subsequent cases. Under those cases, while consideration of race is permitted, race must not be the predominant factor in the race-neutral considerations are subordinated to racial considerations, unless that subordination is narrowly tailored to serve a compelling state interest.

**II. CONTIGUITY.** All legislative and congressional districts should be composed of contiguous geography. Contiguity by water is acceptable to link territory within a district provided that there is a

reasonable opportunity to access all parts of the district and the linkage is designed to meet the other criteria stated herein. Point-to-point contiguity is acceptable so long as adjacent districts do not use the same vertices as points of traversal.

**III. ADDITIONAL CONSIDERATIONS.** Other criteria that should be given consideration, where practical and appropriate, in no particular order of preference, are:

**A. Communities of Interest.** Communities of interest should be considered. Areas defined by geographic, demographic, historic or other characteristics that cause people to identify with one another, including economic, social, cultural, language, political, and recreational activity interests common to the area's population may constitute communities of interest. Communities of interest may be overlapping and may consist of one or more formally, or informally, defined geographic areas with unifying common interests.

**B. Constituent Consistency.** Preserving the cores of existing districts, keeping incumbents' residences in districts with their core constituents, and avoiding contests between incumbent legislators should be considered.

#### C. Minimizing Divisions of Cities and Towns.

#### D. Minimizing Divisions of County Boundaries.

**E. Minimizing Divisions of Voting Precinct Boundaries.** Voting precinct boundaries are represented by the Census Bureau's Voting Tabulation District (VTD) lines. Both existing lines and pending precinct boundary realignments should be considered. If precincts are split, every effort should be made to divide precincts along recognizable and demonstrable boundaries.

**F. District Compactness.** In determining the relative compactness of a district, consideration should be given to geographic, demographic, communities of interest, and the extent to which parts of the district are joined by roads, media outlets, or other means for constituents to communicate effectively with each other and with their representatives.

**IV. DATA.** The total state population and the population of the defined subunits thereof, as reported by the 2020 Federal Decennial Census, shall be the exclusive permissible population database used for the development, evaluation, and analysis of proposed redistricting plans. Other current and verifiable sources of demographic and political information may be considered in drafting and analyzing proposed redistricting plans.

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- Derived from decisions of this Court and the Supreme Court
- Identify race-neutral traditional principles, including core preservation, avoiding county and VTD splits, and communities of interest
- Authorize consideration of “political” communities and data, “political beliefs,” and “voting behavior”

# THE ENACTED PLAN BEST PRESERVES DISTRICT CORES (FOF 478, 637, 653, 675, 699-700; SX 29c)

Use:

Plan Name: House Plan 2 Senate Amendment 1

Plan Type:

**Core Constituencies**

Tuesday, January 11, 2022 9:07 AM

From Plan: Benchmark Plan

Plan: House Plan 2 Senate Amendment 1, 731,263 Total Population

District 1 --

	Population	[Hispanic Origin]	NH_White	NH_DOL_BlK	[18+ Pop]	[118+ Pop]	[NH18+ White]	[NH18+ DOJ_BlK]
Dist 1	178,464 (24.76%)	16,034 (9.02%)	476,795 (24.53%)	11,800,514 (40.40%)	2,000,000 (24.23%)	36,738 (8.60%)	362,731 (84.28%)	79,606 (21.69%)
Dist 6	12,789 (7.22%)	3,037 (2.38%)	27,328 (5.48%)	28,740 (29.54%)	45,878 (2.75%)	2,380 (5.63%)	1,754 (1.71%)	15,764 (14.36%)
Total and % Population	191,253 (26.98%)	19,071 (9.40%)	504,123 (24.01%)	11,829,254 (40.84%)	2,045,878 (24.23%)	39,118 (8.60%)	364,485 (86.00%)	95,370 (21.69%)

Plan: House Plan 2 Senate Amendment 1, 731,263 Total Population

District 2 --

	Population	[Hispanic Origin]	NH_White	NH_DOL_BlK	[18+ Pop]	[118+ Pop]	[NH18+ White]	[NH18+ DOJ_BlK]
Dist 2	177,432 (24.23%)	49,331 (27.80%)	441,034 (24.79%)	176,117 (26.33%)	2,000,000 (24.23%)	36,738 (8.60%)	362,731 (84.28%)	79,606 (21.69%)
Dist 5	21,171 (12.85%)	7,841 (3.65%)	5,444 (12.70%)	5,447 (2.91%)	18,324 (1.70%)	1,300 (1.70%)	4,021 (1.70%)	1,800 (3.65%)
Total and % Population	198,603 (27.08%)	57,172 (28.80%)	446,478 (24.79%)	181,564 (26.33%)	2,018,324 (24.23%)	38,038 (8.60%)	366,752 (86.00%)	81,406 (21.69%)

Plan: House Plan 2 Senate Amendment 1, 731,264 Total Population

District 3 --

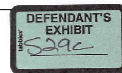
	Population	[Hispanic Origin]	NH_White	NH_DOL_BlK	[18+ Pop]	[118+ Pop]	[NH18+ White]	[NH18+ DOJ_BlK]
Dist 3	162,104 (22.15%)	28,232 (17.42%)	161,154 (24.34%)	122,214 (21.08%)	1,715,000 (23.45%)	21,308 (9.20%)	208,801 (20.54%)	91,000 (22.15%)
Dist 7	1,111 (0.67%)	741 (0.29%)	5,143 (0.89%)	1,602 (0.80%)	5,115 (0.80%)	807 (1.59%)	1,026 (0.92%)	605 (0.71%)
Dist 5	1,106 (0.66%)	2,751 (0.65%)	16,106 (1.60%)	9,558 (0.22%)	34,912 (0.22%)	1,247 (0.37%)	15,101 (1.51%)	7,116 (0.71%)
Total and % Population	164,321 (22.48%)	31,724 (19.36%)	166,803 (24.34%)	133,476 (21.08%)	1,751,017 (23.45%)	23,362 (9.20%)	224,928 (20.54%)	98,721 (22.15%)

Plan: House Plan 2 Senate Amendment 1, 731,264 Total Population

District 4 --

	Population	[Hispanic Origin]	NH_White	NH_DOL_BlK	[18+ Pop]	[118+ Pop]	[NH18+ White]	[NH18+ DOJ_BlK]
Dist 4	162,104 (22.15%)	28,232 (17.42%)	161,154 (24.34%)	122,214 (21.08%)	1,715,000 (23.45%)	21,308 (9.20%)	208,801 (20.54%)	91,000 (22.15%)
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Magnitude



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- The Senate Guidelines identify “[p]reserving the cores of existing districts” as a traditional principle.
- The Enacted Plan is the best core preservation plan in the record: it outperforms all alternatives identified by Plaintiffs.
- Preserving district cores is the “clearest expression” of respecting communities of interest. *Colleton County*, 201 F. Supp. 2d at 649.



# THE ENACTED PLAN REPAIRS COUNTY AND VTD SPLITS (FOF 480, PX 175, SX 3)

ERIC  
Plan Name: House Plan 2 Senate Amendment 1  
Plan Type:

**Political Subdivision Splits Between Districts**  
Tuesday, January 11, 2022 9:03 AM

Number of subdivisions split into more than one district: **Full Counts**  
County: 13 County: 0  
Voting District: 13 Voting District: 0

Number of times a subdivision is split into multiple districts:  
County: 10  
Voting District: 13

County	Voting District	District	Population
Jeff. Coverts			
Chalkville SC		1	179,743
Chalkville SC		3	228,489
Colleton SC		1	2,958
Colleton SC		8	36,248
Dorchester SC		1	177,543
Dorchester SC		6	33,897
Florence SC		6	113,679
Florence SC		7	175,470
Greenville SC		3	65,220
Greenville SC		4	411,308
Jasper SC		1	4,511
Jasper SC		6	24,219
Orangeburg SC		2	24,994
Orangeburg SC		9	59,039
Richland SC		2	221,471
Richland SC		8	192,770
Spartanburg SC		4	222,194
Spartanburg SC		5	17,887
Sumter SC		3	21,681
Sumter SC		9	23,885
Split VTDs			
Dorchester SC	Rec'd HILL 2	1	2,131
Dorchester SC	Rec'd HILL 2	6	149
Dorchester SC	Cypress	1	5,839
Dorchester SC	Cypress	6	702
Dorchester SC	Delemars	1	476
Dorchester SC	Delemars	6	1,172
Dorchester SC	Gibson	1	1,680
Dorchester SC	Gibson	6	130
Dorchester SC	Gibson 2	1	1,565
Dorchester SC	Gibson 2	6	114
Dorchester SC	Lincoln	1	416
Dorchester SC	Lincoln	6	1,967

MapState

DEFENDANT'S EXHIBIT  
Sage

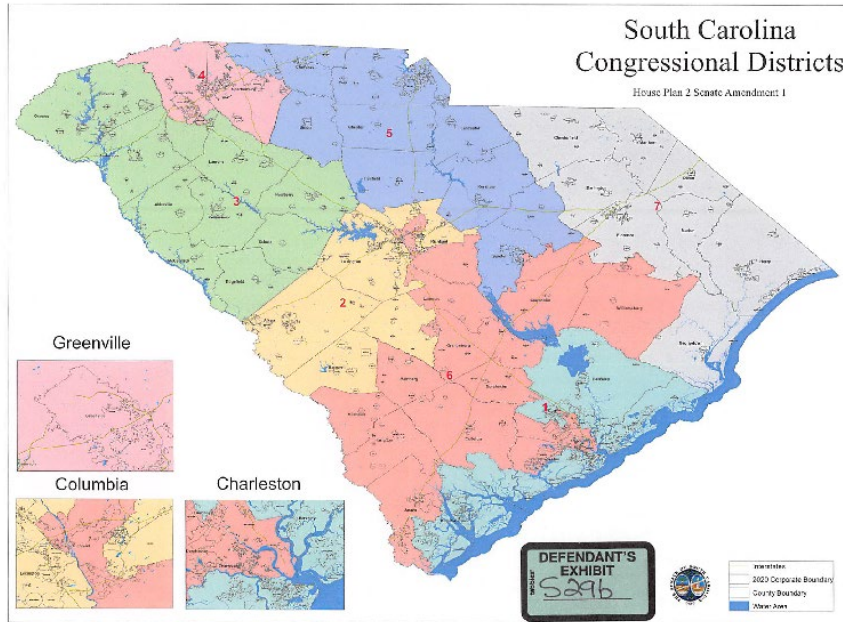
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- The Guidelines identify avoiding county and VTD splits as traditional principles.
- The Enacted Plan outperforms the Benchmark Plan on county splits (10 vs. 12) and VTD splits (13 vs. 52).
- The Enacted Plan outperforms both NAACP Plans on county and VTD splits.

## **THE ENACTED PLAN RESPECTS COMMUNITIES OF INTEREST (PX 175 & SX 3)**

- **Preserving the cores of the Benchmark Districts is the “clearest expression” of the Enacted Plan’s respect for communities of interest. (*Colleton County*)**
- **The Enacted Plan respects “political” communities of interest (PX 175, SX 3).**
- **The Enacted Plan respects communities identified in public testimony:**
  - **Fort Jackson in District 2 (*Colleton County*; FOF 5-7, 491, 517)**
  - **Gullah-Geechee heritage corridor in Sea Islands & Beaufort (FOF 507)**
  - **Sun City (FOF 428, 482)**
  - **Limestone 1 & 2 precincts with Lexington (FOF 383, 512)**
- **No plan identified by Plaintiffs respects all of these communities of interest (FOF 648-650, 665-667, 693-695, 717-719).**

## THE ENACTED PLAN IS CONTIGUOUS AND COMPACT (FOF 469, 476)



- The Guidelines direct the General Assembly to draw contiguous and compact districts.
- The Enacted Districts are contiguous and compact.

# THE ENACTED PLAN ALONE ACHIEVES THE GENERAL ASSEMBLY'S POLITICAL GOALS (PX 175 & SX 3)

Adopted September 17, 2021

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### I. REQUIREMENTS OF FEDERAL LAW

#### A. Population equality

##### 1. Legislative districts

The Fourteenth Amendment to the U.S. Constitution requires an honest and good faith effort to construct legislative districts as nearly of equal population as is practicable. The good faith effort required by the Fourteenth Amendment does not preclude the pursuit of legitimate redistricting policies such as making district compact, respecting local and vision boundaries, preserving the cores of prior districts, and avoiding cracks between incumbent legislatures. Any redistricting plan with population deviation ranges of greater than ten percent (10%) between the most-populous and least-populous districts is presumptively unconstitutional. The good faith effort required by the Constitution is proven, so that the State may avoid assuming the additional burden under federal law, population deviation of individual districts shall be within plus (+) or minus (-) five percent (5%) of the ideal population and within an overall range of less than six percent (6%). This guideline does not affect the requirement of an honest and good faith effort to construct districts as nearly of equal population as is practicable.

##### 2. Congressional districts

Under the apportionment clause of Article I, Section 2 of the U.S. Constitution, any apportionment among several members is to be made as nearly as practicable. The purpose of the apportionment is to ensure that the number of representatives is proportional to the population of the State. The purpose of the apportionment is to ensure that the number of representatives is proportional to the population of the State. The purpose of the apportionment is to ensure that the number of representatives is proportional to the population of the State.

**B. Voting rights.** A redistricting plan for the General Assembly or Congress must not have the purpose or the effect of diluting minority voting strength and must otherwise comply with Section 2 of the Voting Rights Act as interpreted through *Reich v. State of Maryland* and the Fourteenth and Fifteenth Amendments to the U.S. Constitution.

**C. Avoidance of racial gerrymandering.** All plans must comply with the Fourteenth Amendment to the U.S. Constitution, as interpreted by the United States Supreme Court in *Shaw v. Reno* and subsequent cases. Under those cases, while consideration of race is permitted, race must not be the predominant factor in the race-neutral considerations are subordinated to racial considerations, unless that subordination is necessary to serve a compelling state interest.

**II. CONTIGUITY.** All legislative and congressional districts should be composed of contiguous geography. Contiguity by water is acceptable to link territory within a district provided that there is a

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Adopted September 17, 2021

reasonable opportunity to access all parts of the district and the linkage is designed to meet the other criteria stated herein. Point-to-point contiguity is acceptable so long as adjacent districts do not use the same vertices as points of traversal.

**III. ADDITIONAL CONSIDERATIONS.** Other criteria that should be given consideration, where practical and appropriate, in no particular order of preference, are:

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- **House Guidelines VII (PX 175):**  
communities of interest around  
“political beliefs” and “voting  
behavior”
- **Senate Guidelines III.A, IV (SX 3):**  
“political” communities of interest  
and “political information”

## THE ENACTED PLAN ALONE ACHIEVES THE GENERAL ASSEMBLY'S POLITICAL GOALS (FOF 451-452, 462, 534, 552, 643, 660, 684-685, 710)

House Plan 2 Senate Amendment 1

District	Biden	%Biden	Trump	%Trump	Total
1	1,0962	45.61%	20583	44.89%	21675
2	16040	44.61%	19595	52.27%	35635
3	16550	36.97%	28550	63.03%	45100
4	11765	40.57%	20190	59.43%	31955
5	14610	40.71%	21500	59.29%	36110
6	21877	66.32%	11190	33.68%	33067
7	14575	40.70%	21055	59.30%	35630



- The General Assembly pursued the political goal of making District 1 a more Republican-leaning district.
- The Enacted Plan achieves that goal, increasing the Republican vote share in District 1 by 1.36% on the 2020 presidential election results.
- No plan identified or proposed by Plaintiffs achieves that result – as Plaintiffs concede (Pls.’ FOF 797).
- All alternative plans make District 1 a majority-Democratic district.

# THE ENACTED PLAN PROTECTS INCUMBENTS BETTER THAN PLAINTIFFS' ALTERNATIVES (FOF 465, 478, 494)

Adopted September 17, 2021

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Adopted September 17, 2021

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•The Enacted Plan keeps incumbents with their core constituents, avoids pairing incumbents, and maintains the 6-1 Republican-Democratic split.

•No plan identified or proposed by Plaintiffs protects incumbents as well as the Enacted Plan.

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## **THE ENACTED PLAN IS THE PRODUCT OF ROBUST LEGISLATIVE PROCESS (PART 1) (FOF 42-476, 590-633)**

- **The General Assembly engaged in robust legislative process, including:**
  - **Holding public hearings across the State;**
  - **Establishing special committees to draft redistricting plans;**
  - **Adopting Redistricting Guidelines;**
  - **Holding subcommittee hearings, committee hearings, and floor debates;**
  - **Establishing special redistricting websites with maps, plans, and data;**
  - **Drawing plans for any senator who requested one, including Democrats; and**
  - **Receiving proposed plans and thousands of public comments through dedicated redistricting email addresses and websites.**

## **THE ENACTED PLAN IS THE PRODUCT OF ROBUST LEGISLATIVE PROCESS (PART 2) (FOF 42-476, 590-633)**

### **Lynn Teague (LWV):**

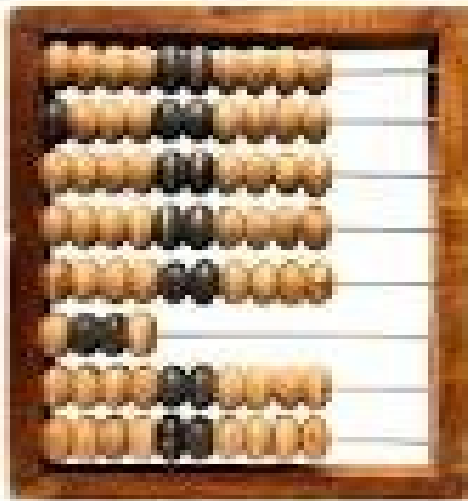
- **“I think the Senate did a very fine job of organizing its hearings around the state.” 10/6/2022 Trial Tr. 739:19–20.**
- **“I cannot recall anything that received as much process attention,” and “I commended the senate staff for their responsible professional work.” *Id.* 743:5–9.**



## **THE GENERAL ASSEMBLY DID NOT USE RACE TO DRAW THE ENACTED PLAN (FOF 409, 459)**

- The map drawer started with the Benchmark Plan upheld in *Backus*.
- The map drawer accommodated requests from:
  - Senator Rankin not to touch District 7 more than necessary;
  - Congressman Wilson to keep Fort Jackson in District 2 and not to extend District 2 to Beaufort; and
  - Congressman Clyburn to draw a “minimal change” map.
- The map drawer *never* used race to draw districts.
- The map drawer used political data to draw districts.

## PLAINTIFFS' CLAIMS DO NOT ADD UP



+ Line Between Districts 1 + **6**  
+ Line Between Districts 2 + **6**  
+ Line Between Districts 5 + **6**  
= Districts 1, 2, and 5 ONLY  
**BUT NOT DISTRICT 6**

**PLAINTIFFS SEEK A WORSE-PERFORMING VERSION OF DISTRICT 2:  
BLACK-PREFERRED CANDIDATE VOTE SHARE (2020 PRES.)  
(FOF 644-645, 661-662, 686-687, 712-713)**

**PLAINTIFFS' ALTERNATIVE PLANS**

**SC NAACP PLAN 1: 37.9%**

**SC NAACP PLAN 2: 40.8%**

**AMENDMENT 2A (HARPO): 36.5%**

**LWV: 39.9%**

**ENACTED PLAN: 44.6%**

**PLAINTIFFS SEEK A WORSE-PERFORMING OR LOSING VERSION OF  
DISTRICT 5: BLACK-PREFERRED CANDIDATE VOTE SHARE  
(2020 PRES.) (FOF 646-647, 663-664, 688, 714-715)**

**PLAINTIFFS' ALTERNATIVE PLANS**

**SC NAACP PLAN 1: 40.5%**

**SC NAACP PLAN 2: 37.9%**

**AMENDMENT 2A (HARPO): 46.9%**

**LWV: 40.0%**

**ENACTED PLAN: 40.8%**

**PLAINTIFFS SEEK A CROSSOVER DISTRICT 1:  
BVAP & BLACK-PREFERRED CANDIDATE VOTE SHARE (2020 PRES.)  
(FOF 464, 486, 640, 643, 656, 660, 680, 684, 705, 710)**

**SC NAACP PLAN 1**

**34.02% BVAP – 52.6% VOTE**

**SC NAACP PLAN 2**

**23.26% BVAP – 52.5% VOTE**

**AMENDMENT 2A (HARPO)**

**20.57% BVAP – 51.8% VOTE**

**LWV**

**22.57% BVAP – 51.7% VOTE**

**ENACTED PLAN**

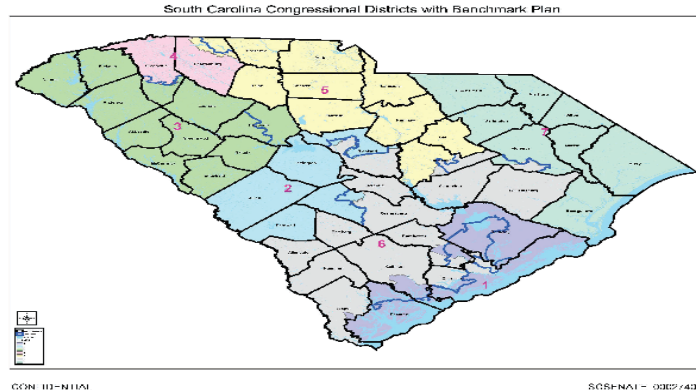
**16.72% BVAP – 45.6% VOTE**

## **BACKUS: THE BENCHMARK PLAN COMPORTS WITH TRADITIONAL PRINCIPLES AND IS CONSTITUTIONAL**

### **Backus: The Benchmark Plan complies with traditional principles.**

- Defendants “disproved” racial gerrymandering by “demonstrating that their decisions adhered to traditional race-neutral principles.” 857 F. Supp. 2d at 560.
- **NO STRICT SCRUTINY ANALYSIS = NO PREDOMINANT USE OF RACE & NO USE OF RACE TO COMPLY WITH VRA**
- **THE BENCHMARK LINES, COUNTY SPLITS, VTD SPLITS, AND DISTRICT CORES ARE ALL CONSTITUTIONAL.**

## THE ENACTED PLAN'S CHANGES TO THE BENCHMARK PLAN COMPORT WITH TRADITIONAL PRINCIPLES

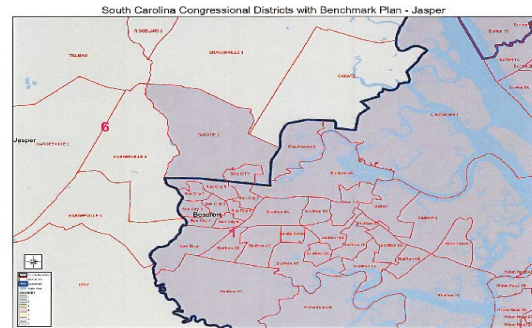


**The Enacted Plan's changes to the Benchmark Lines reflect:**

- **Compliance with traditional districting principles**
- **Politics**
- **Accommodating requests from Senate and House members, Congressman Wilson, and Congressman Clyburn**

**NOT RACE!**

## JASPER COUNTY: KEEPING SUN CITY TOGETHER (FOF 428, 482, 500-504)



CONFIDENTIAL

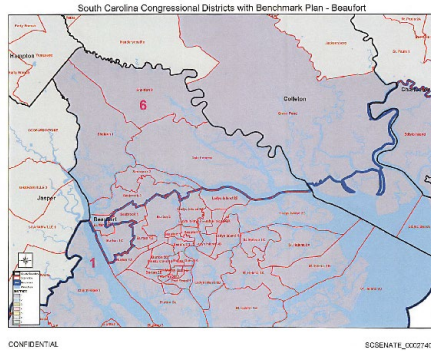
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- Moved Oaktie 2 and Sun City precincts to District 1
- Reflected public testimony and legislative record (as well as Clyburn Map) regarding Sun City community of interest in Beaufort and Jasper
- Supported by Senator Margie Bright Matthews, an African-American Democrat

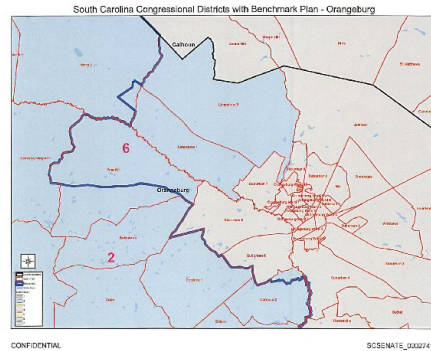


## MAKING BEAUFORT COUNTY WHOLE (FOF 505-510)



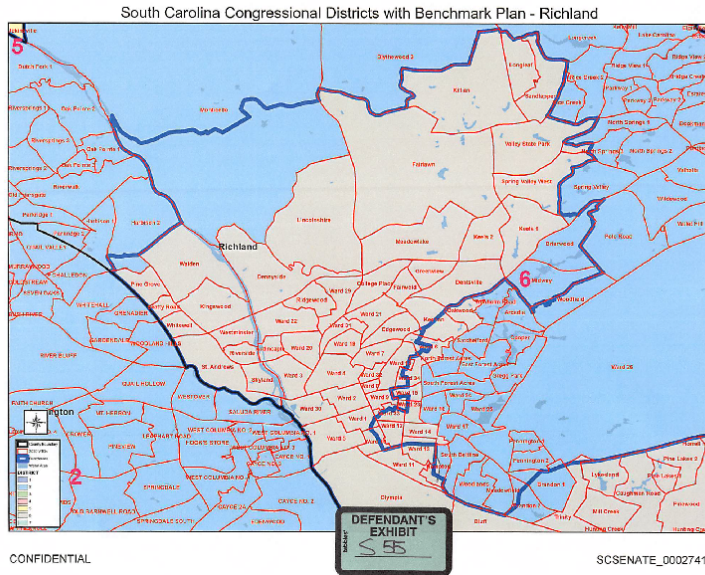
- Made Beaufort County whole
- United the Gullah-Geechee community in Beaufort and Sea Islands
- Eliminated a county split from the Benchmark Plan
- Eliminated split of Beaufort 1D VTD

## ORANGEBURG: COMMUNITY OF INTEREST & VTDS (FOF 511-515)



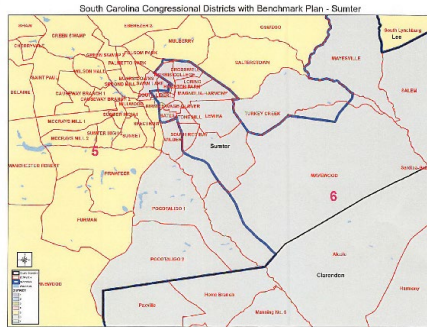
- **Maintained county split from Benchmark Plan and Clyburn Map**
- **Moved Limestone 1 & 2 VTDs to CD 2**
  - Public testimony identifying community of interest with Lexington
  - Clyburn Map
- **Repaired all 3 VTD splits – North 2, Pine Hill, Cordova 2**

## **RICHLAND COUNTY: FT. JACKSON, VTDs & FOLLOWING LINE (FOF 516-520)**



- **Maintained county split from Benchmark Plan and Clyburn Map**
- **Preserved hook shape around Fort Jackson that this Court upheld in *Colleton County* and *Backus***
- **Repaired 19 of 21 VTD splits**
- **Followed the line between Senate Districts 21 and 22, facilitating election administration**

## SUMTER: CONGRESSMAN CLYBURN & VTDs (FOF 521-525)



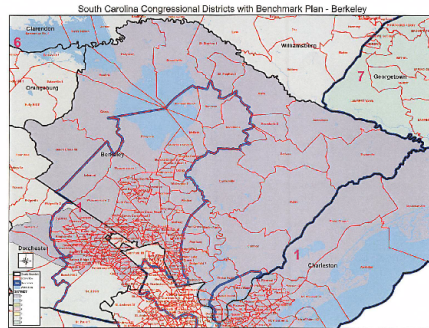
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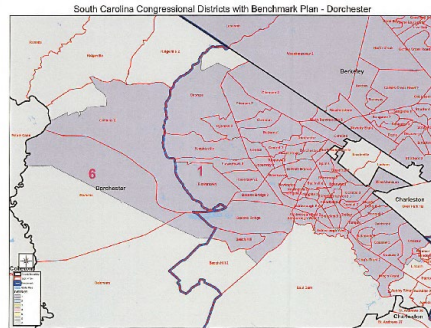
- Maintained county split from Benchmark Plan and Clyburn Map
- Placed more of Sumter with Congressman Clyburn at his request
- Repaired 5 of 6 VTD splits

## MAKING BERKELEY COUNTY WHOLE (FOF 530-535)



- Made Berkeley County whole
- Placed all of Berkeley County with incumbent Congresswoman Nancy Mace, who resided there
- Repaired a county split
- Repaired 3 VTD splits
- With corresponding moves in Dorchester and Charleston, made District 1 more Republican-leaning

## **DORCHESTER COUNTY: SHAPE, LINE & POLITICS (FOF 536-542)**



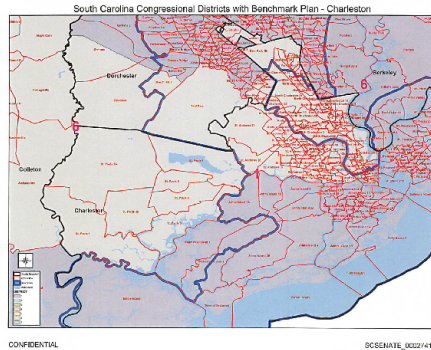
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SCSENATE\_00027412



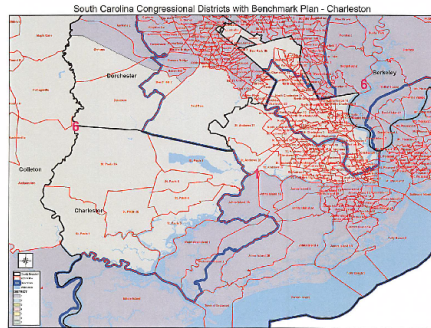
- **Maintained county split from Benchmark Plan and Clyburn Map**
- **Moved heavily-Republican and heavily-white Saul Dam VTD to District 6 to improve shape**
- **Split 7 VTDs**
  - **5 VTDs: improved District 6's shape**
  - **2 VTDs: followed HD 98 line**
  - **In total, majority-Republican and majority-white**

## CHARLESTON COUNTY: TRADITIONAL PRINCIPLES & POLITICS (PART 1) (FOF 543-563)



- Maintained county split from Benchmark Plan and Clyburn Map
- Comported with public testimony supporting 2 representatives for Charleston
- Followed natural and geographic boundaries
- Placed coastal Charleston in CD 1
- Placed Charleston peninsula in CD 6

## CHARLESTON COUNTY: TRADITIONAL PRINCIPLES & POLITICS (PART 2) (FOF 543-563)



CONFIDENTIAL

SCSENATE\_00327411



- Followed the county line around North Charleston, Deer Park, and Ladson
- Fixed all 5 VTD splits
- Moved Democratic areas from District 1 to District 6 (West Ashley, Deer Park, Ladson, Lincolnville)
- With corresponding moves in Berkeley and Dorchester, made District 1 more Republican-leaning



**DISTRICT 1 & 6 LINE: TRADITIONAL PRINCIPLES, NOT RACE  
(PART 1) (FOF 564-589)**

**Enacted District 1**

**Republican Vote Share: + 1.39%**

**BVAP: + 0.16%**

**DISTRICT 1 & 6 LINE: TRADITIONAL PRINCIPLES, NOT RACE  
(PART 2) (FOF 564-589)**

**District 6 → District 1 vs. District 1 → District 6**

**Higher Republican % (43.15% vs. 42.02%)**

**Higher BVAP % (37.01% vs. 23.44%)**

**DISTRICT 1 & 6 LINE: TRADITIONAL PRINCIPLES, NOT RACE  
(PART 3) (FOF 564-589)**

**Beaufort County: District 6 → District 1**

**Higher BVAP % Than District 1  
(42.66% vs. 16.72%)**

**DISTRICT 1 & 6 LINE: TRADITIONAL PRINCIPLES, NOT RACE  
(PART 4) (FOF 564-589)**

**Berkeley County: District 6 → District 1**

**Higher BVAP % Than District 1**

**(40.31% vs. 16.72%)**

**Berkeley = Higher BVAP % Than Charleston**

**(22.6% vs. 22.09%)**

**DISTRICT 1 & 6 LINE: TRADITIONAL PRINCIPLES, NOT RACE  
(PART 5) (FOF 564-589)**

**Charleston: 6 → 1 vs. 1 → 6**

**Higher BVAP (37.97% vs. 22.07%)**

**DISTRICT 1 & 6 LINE: TRADITIONAL PRINCIPLES, NOT RACE  
(PART 6) (FOF 564-589)**

**Charleston 1&6: Decrease BVAP Disparity**

**Benchmark (2010): 49.92% (6) vs. 18.44% (1)**

**Benchmark (2020): 41.53% (6) vs. 14.65% (1)**

**Enacted: 31.18% (6) vs. 10.42% (1)**

**Charleston Portion Of CD 1: Less Democratic**

**Benchmark: 52.29% vs. Enacted: 49.23%**

## **PLAINTIFFS' EVIDENCE FAILS TO CARRY THEIR DEMANDING BURDEN**

- **The undisputed facts demonstrate that Plaintiffs cannot prove that the Enacted Plan is unconstitutional.**
- **Plaintiffs also have no direct evidence of racial gerrymandering or discriminatory intent.**
- **Plaintiffs offer a circumstantial case – but their circumstantial case ignores the circumstances.**

## **PLAINTIFFS' EVIDENCE FAILS TO CARRY THEIR DEMANDING BURDEN**

### **FAILURE #1**

**Plaintiffs' putative expert analyses are “incomplete” and “unconvincing” because the experts “fail[ed] to consider all of the traditional race-neutral principles that guide redistricting in South Carolina.”**

**See *Backus*, 857 F. Supp. 2d at 562-563.**



## **PLAINTIFFS' PUTATIVE EXPERT EVIDENCE USES FLAWED DATA (FOF 721-739)**

- **Plaintiffs' putative experts Drs. Imai, Liu, and Duchin used a flawed and unverified dataset.**
  - **Dr. Liu: 91 split VTDs in the Enacted Plan**
  - **Enacted Plan: 13 split VTDs**
- **The dataset lists nonexistent precincts and places some precincts in the wrong counties.**
- **Neither Dr. Fifield nor Plaintiffs' putative experts verified the dataset.**

## **DR. IMAI'S SIMULATION ANALYSIS IS INCOMPLETE AND UNCONVINCING (PART 1) (FOF 743-805)**

- **Did not examine whether the General Assembly used race or how it drew the Enacted Plan**
- **Disregarded several traditional districting principles**
  - **Core preservation, avoiding VTD splits, communities of interest, keeping incumbents with core constituents, politics**
- **Misapplied other traditional principles**
  - **Not equal population (0.1%)**
  - **“Strengths” do not replicate weight General Assembly gave the factor**
  - **Considered plan-wide averages for compactness and splits**

## **DR. IMAI'S SIMULATION ANALYSIS IS INCOMPLETE AND UNCONVINCING (PART 2) (FOF 743-805)**

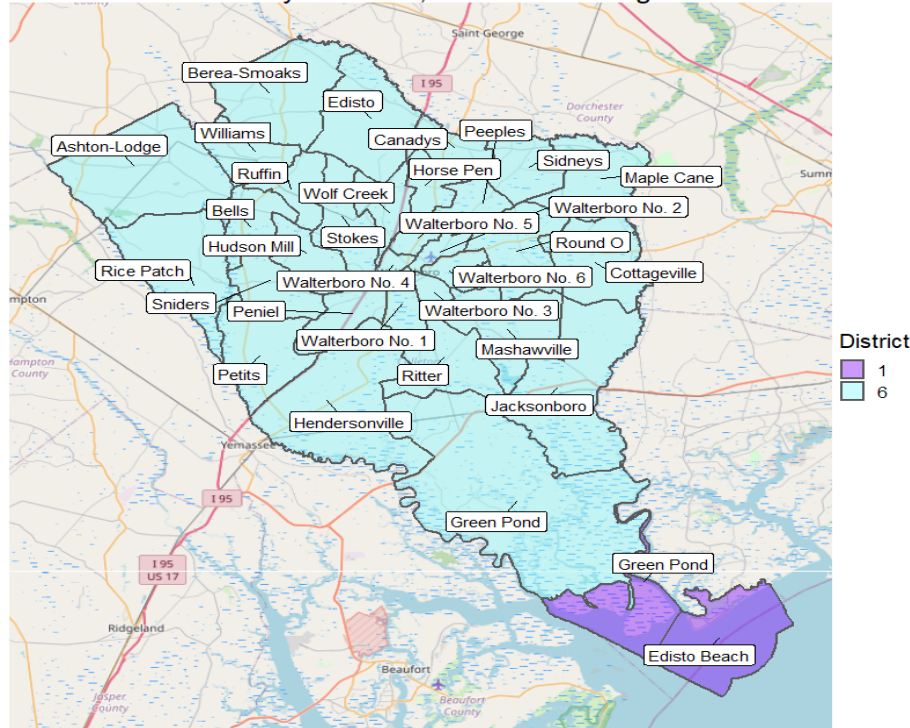
- **Used a racial target in his statewide simulations**
  - **Race-based simulation plans: 76.3% make Charleston whole in District 1; 39.4% make Richland whole in District 6; 90% make Sumter whole in District 6**
  - **The Enacted Plan does none of those**
- **Did not examine race-neutral explanations for the Enacted Plan**
  - **Traditional districting principles**
  - **Politics**
  - **Ft. Jackson**
  - **Congressman Clyburn's requests**

## **DR. LIU'S ANALYSES ARE INCOMPLETE AND UNCONVINCING (PART 1) (FOF 498, 806-833)**

- **Concedes that alternative versions of District 1 turn on crossover voting**
- **County splits analysis ignores the facts**
  - **Did not control for total population**
  - **Did not know that 9 of 10 counties were split in Benchmark Plan or that the Enacted Plan repairs two county splits along District 6 line**
- **“Empirical study” of race and partisan affiliation is flawed**
  - **Used 2018 open primary rather than 2020 general election**
  - **Did not control for core preservation, VTD or voter location, compactness, contiguity, avoiding VTD splits, or incumbency protection**
  - **Shows that black Democrats and white Democrats treated the same**

## DR. LIU'S ANALYSES ARE INCOMPLETE AND UNCONVINCING (PART 2) (FOF 806-833)

Colleton County Precincts, Benchmark Assignments



© OpenStreetMap contributors

- **“Verification Study”/Envelope Approach ignores contiguity and other traditional principles**
  - **Core preservation, VTD or voter location, compactness, contiguity, avoiding VTD splits, and incumbency protection**

## **DR. RAGUSA'S ENVELOPE ANALYSIS IS INCOMPLETE AND UNCONVINCING (FOF 834-853)**

- **Used “county envelope” methodology supplied by Plaintiffs’ counsel**
- **Did not control for several traditional districting principles**
  - **Contiguity, core retention, compactness, avoiding VTD splits, avoiding political subdivision splits, politics, communities of interest**
- **Concluded that race was a significant factor in 5 of 7 districts, including two districts Plaintiffs do not challenge (3 & 6)**

## **DR. DUCHIN'S VARIOUS ANALYSES ARE INCOMPLETE AND UNCONVINCING (PART 1) (FOF 854-922)**

- **“Communities of interest” analysis is flawed and “not authoritative”**
  - **Concedes that her analysis is “not authoritative,” “definitely . . . not representative of the views of all South Carolina voters,” and not the only “reasonable” view of communities of interest**
  - **Did not review entire public record or any of the legislative record**
  - **Did not discuss with members of the public their testimony or whether the Enacted Plan respects their communities**
  - **Misidentifies communities as split when they are not (Beaufort, Gullah-Geechee, Sun City)**
  - **All of her communities are counties or collections of counties—and they are all majority-Democratic counties.**

## **DR. DUCHIN'S VARIOUS ANALYSES ARE INCOMPLETE AND UNCONVINCING (PART 2) (FOF 854-922)**

- **Disregards race-neutral explanations for “split” communities of interest**
  - **Dorchester: Did not examine House District 98 line or politics**
  - **Charleston**
    - **Conceded that Summerville, Ladson, and North Charleston span multiple counties**
    - **Used inaccurate boundaries for cities of Charleston and North Charleston**
    - **Did not examine whether Enacted district line follows county line, places all of coastal Charleston in one district, or places all of peninsula in one district**
    - **Did not examine natural geographic boundaries, politics, or repairing VTDs**



## **DR. DUCHIN'S VARIOUS ANALYSES ARE INCOMPLETE AND UNCONVINCING (PART 3) (FOF 854-922)**

- **Disregards race-neutral explanations for “split” communities of interest**
  - **Jasper: Did not know that the split unifies Sun City in a single district, even though her report cites public testimony offering that explanation**
  - **Orangeburg**
    - **Did not recall public testimony supporting the split**
    - **Did not know which VTDs had been moved**
    - **Did not examine whether changes repaired split VTDs**

## **DR. DUCHIN'S VARIOUS ANALYSES ARE INCOMPLETE AND UNCONVINCING (PART 4) (FOF 854-922)**

- **Disregards race-neutral explanations for “split” communities of interest**
  - **Richland**
    - **Conceded that hook shape has been upheld in prior cases**
    - **Was “sure” that “fixing” hook shape would involve tradeoffs elsewhere**
    - **Did not examine whether changes repaired VTD splits**
    - **Used inaccurate boundaries for city of Columbia**

## **DR. DUCHIN'S VARIOUS ANALYSES ARE INCOMPLETE AND UNCONVINCING (PART 5) (FOF 854-922)**

- **Disregards race-neutral explanations for “split” communities of interest**
  - **Sumter**
    - **Did not examine whether public testimony or legislative record supported the split**
    - **Did not examine whether changes placed more of the city of Sumter in District 6**
    - **Did not examine whether changes repaired VTD splits**
    - **Used inaccurate boundaries for city of Sumter**

## **DR. DUCHIN'S VARIOUS ANALYSES ARE INCOMPLETE AND UNCONVINCING (PART 6) (FOF 854-922)**

- **“Ensemble method” is incomplete and unconvincing**
  - **Does not simulate how map was drawn or draw maps that could be enacted**
  - **Disregards several traditional districting principles**
    - **Core preservation, incumbency protection, politics**
  - **Misapplies other traditional principles**
    - **Not equal population (1%)**
    - **No communities of interest other than the 5 she identified**
    - **No data on county splits, municipal splits, or VTD splits**

## **DR. DUCHIN'S VARIOUS ANALYSES ARE INCOMPLETE AND UNCONVINCING (PART 7) (FOF 854-922)**

- **“Electoral opportunity” analysis fails to decouple race and politics**
  - **Black candidate of choice is always the Democrat**
  - **Concedes that “electoral opportunity” for black voters “likely” turns on “significant white crossover voting”**
  - **Concedes that black voters and crossover voters are treated the same, regardless of their race**
  - **Enacted Plan creates more opportunity for black voters in elections Dr. Duchin considers most probative than in other elections**
- **Believes that the General Assembly must prioritize black electoral opportunity over compliance with traditional principles**

## **LYNN TEAGUE IS NOT AN EXPERT**

- **Plaintiffs repeatedly cite testimony from Lynn Teague (Pls. FOF 57, 71, 93, 107-110, 164-165, 198-199, 215, 251-254, 363-364, 422, 487, 506-507, 548, 579, 618h, 690, 702).**
- **Ms. Teague opposed the Enacted Plan (FOF 1029-1054).**
- **Plaintiffs did not disclose Ms. Teague as an expert, and Ms. Teague conducted no expert analysis.**
- **Ms. Teague did not consider race-neutral explanations for the Enacted Plan.**
- **Ms. Teague has no knowledge of how the Enacted Plan was drawn.**

## JOSEPH OPPERMANN IS NOT AN EXPERT

- **Plaintiffs repeatedly cite testimony from Joseph Oppermann (Pls. FOF 47, 56, 65-68, 85-86, 96-97, 101, 109, 115-116, 119, 148, 151, 156-157, 214, 223, 262, 270, 548, 688).**
- **Mr. Oppermann, a well-known Democrat, opposed the Enacted Plan.**
- **In fact, Mr. Oppermann was paid to oppose the Enacted Plan and to draft the Harpootlian Plan.**
- **Plaintiffs did not disclose Mr. Oppermann as an expert, and he conducted no expert analysis.**
- **Mr. Oppermann did not consider race-neutral explanations and has no knowledge of how the Enacted Plan was drawn.**

## **PLAINTIFFS' EVIDENCE FAILS TO CARRY THEIR DEMANDING BURDEN**

### **FAILURE #2**

**Plaintiffs claim that they do not need to propose an alternative plan (Pls.' FOF 795-797).**

**But an alternative map is required because Plaintiffs have “meager direct evidence of a racial gerrymander.”**

***Cooper*, 137 S. Ct. at 1481; see also *id.* at 1488-91 (dissent) (alternative map always required).**



## **PLAINTIFFS FAIL TO PROVIDE A PROBATIVE ALTERNATIVE PLAN**

### **No alternative identified by Plaintiffs:**

- **Achieves the General Assembly's political goals;**
- **Is comparably consistent with traditional principles;**
- **Achieves greater racial balance; or**
- **Could have been enacted by the General Assembly.**

***Cromartie II*, 532 U.S. at 258.**

## **NO ALTERNATIVE PLAN ACHIEVES THE GENERAL ASSEMBLY'S POLITICAL GOALS**

**As Plaintiffs concede (Pls' FOF 797), their alternative plans do not maintain the 6-1 Republican-Democratic split.**

- Enacted CD 1: 54.39% GOP (FOF 464)**
- Amendment 2a CD 1: 48.17% GOP (FOF 684)**
- LWV CD 1: 48.25% GOP (FOF 710)**
- NAACP 1 CD 1: 47.4% GOP (FOF 643)**
- NAACP 2 CD 1: 47.5% GOP (FOF 660)**

## NO ALTERNATIVE PLAN IS COMPARABLY CONSISTENT WITH TRADITIONAL PRINCIPLES

- The Enacted Plan preserves more of the core of every *district* than any alternative.
- The Enacted Plan is the only plan that preserves these communities of interest:
  - Fort Jackson in District 2
  - Sun City
  - Limestone 1 & 2 VTDs (Orangeburg) with Lexington

## THE GENERAL ASSEMBLY COULD NOT HAVE ADOPTED NAACP PLAN 1

### NAACP PLAN 1 Is Flawed

- **Violates one-person, one-vote rule (FOF 636)**
- **Worse on core preservation, county splits, and VTD splits (FOF 637-639)**
- **More than doubles District 1's BVAP to over 34% (FOF 640)**
- **Worse for black-preferred candidates in Districts 2 & 5 (FOF 644-647)**

## THE GENERAL ASSEMBLY COULD NOT HAVE ADOPTED NAACP PLAN 2

### NAACP PLAN 2 Is Flawed

- **Violates one-person, one-vote rule (FOF 652)**
- **Indicates “cracking” of black voters under Dr. Duchin’s analysis (FOF 658)**
- **Worse on core preservation, county splits, and VTD splits (FOF 653-655)**
- **Worse for black-preferred candidates in Districts 2 & 5 (FOF 661-664)**

## **THE GENERAL ASSEMBLY COULD NOT HAVE ADOPTED AMENDMENT 2a PLAN**

### **Amendment 2a (Harpootlian) Plan Is Flawed And Partisan**

- **Not a minimal change plan (FOF 673-674)**
- **Worse on core preservation and gives Congressman Clyburn 45% new constituents (FOF 674-677)**
- **Worse for black-preferred candidates in District 2 & does not result in any wins in District 5 (FOF 686-688)**
- **Senator Harpootlian called it “the Democratic caucus plan” on the Senate floor (FOF 689)**
- **Members of the public criticized it as “political gerrymandering” (FOF 690-691)**

## THE GENERAL ASSEMBLY COULD NOT HAVE ADOPTED LWV PLAN

### The LWV Plan Is Flawed

- **Violates one-person, one-vote rule (FOF 697)**
- **Indicates “cracking” of black voters under Dr. Duchin’s analysis (FOF 707)**
- **Not a minimal change plan (FOF 698-699)**
- **Worse on core preservation and gives Congressman Clyburn nearly 50% new constituents (FOF 700-702)**
- **Worse for black-preferred candidates in Districts 2 & 5 (FOF 712-715)**

## THE GENERAL ASSEMBLY COULD NOT HAVE ADOPTED DUCHIN PLAN

### The Duchin Plan Is Flawed

- **Violates one-person, one-vote rule (drawn to 1% deviation)**
- **Does not change only a “single boundary line in the Enacted Plan,” as Plaintiffs falsely claim (Pls.’ FOF 634; *compare* 10.4 AM Tr. 81-82)**
- **Moves 8% of population in Enacted Plan—more than the Enacted Plan moves from the Benchmark Plan—and is worse on core preservation than the Enacted Plan (PX 87 at 1)**
- **Redraws District 5 to a “over 30% BVAP” (PX 67 at 23) compared with 24% in the Enacted Plan (SX 29g)**
- **Does not maintain 6-1 Republican-Democratic split (PX 67 at 23 n.8)**



## **PLAINTIFFS' EVIDENCE FAILS TO CARRY THEIR DEMANDING BURDEN**

### **FAILURE #3**

**Plaintiffs have failed to prove that “race rather than politics” predominantly explains the Enacted Plan.**

***Cromartie II*, 532 U.S. at 243.**

## PLAINTIFFS FAIL TO PROVE THAT RACE RATHER THAN POLITICS PREDOMINATES

- No alternative plan carries Plaintiffs' burden.
- “Dr. Liu explained that using the data available in South Carolina for the 2020 presidential election would make it difficult for him to differentiate race and party effectively.” Pls.’ FOF 187.
- But the Senate only used political data from the 2020 general election to draw the Enacted Plan. Plaintiffs thus *concede* they cannot decouple party from race in the sole data that drove line-drawing.

## **PLAINTIFFS' EVIDENCE FAILS TO CARRY THEIR DEMANDING BURDEN**

### **FAILURE #4**

**Plaintiffs failed to overcome the presumption of good faith and to show discriminatory effect or intent.**

***Arlington Heights*, 429 U.S. at 266; *Feeney*, 442 U.S. at 279; *Abbott*, 138 S. Ct. at 2325; *Backus*, 857 F. Supp. 2d at 576.**

## **PLAINTIFFS FAIL TO SHOW DISCRIMINATORY EFFECT (COL 169-194)**

### **Plaintiffs Fail To Show Discriminatory Effect Because:**

- **Race did not predominate.**
- **All voters are treated the same under traditional districting principles.**
- **All white Democratic voters and all black Democratic voters are treated the same.**
- **Plaintiffs seek a crossover district for Democratic voters, not a performing district for African-American voters.**

## **PLAINTIFFS FAIL TO SHOW DISCRIMINATORY INTENT (COL 195-243)**

### **Plaintiffs Fail To Show Discriminatory Intent Because:**

- **As Dr. Bagley and Ms. Teague admit, the General Assembly gave more process than on any other legislation.**
- **Any departures from “regular” process were not for racial reasons.**
- **Past history does not taint Enacted Plan.**

## **DR. BAGLEY'S ANALYSIS IS INCOMPLETE AND UNCONVINCING (FOF 923-994)**

- **Lacks any personal or scholarly experience, much less expertise, in South Carolina history and redistricting**
- **Relied upon long-past history dating as far back as the colonial era**
- **Presented one-sided version of the Enacted Plan's legislative history focusing on statements by Plan opponents**
- **Concedes that the General Assembly gave more process to redistricting than to other legislation**
- **Provides no standard for a "regular" legislative or redistricting process**
- **Does not consider race-neutral explanations for alleged "irregularities"**
- **The three complaints from Democrats are not "procedural irregularities"**

## **PLAINTIFFS RESORT TO MISREPRESENTATIONS OF THE RECORD**

### **Plaintiffs Misrepresent The Record**

- 1. Clyburn Map**
- 2. Politics**
- 3. Core Retention**
- 4. Alleged Racial Intent**

**PLAINTIFFS MISREPRESENT THE RECORD**

**PLAINTIFFS' MISREPRESENTATION #1**

**CLYBURN MAP**



## **MR. ROBERTS RELIED UPON THE CLYBURN MAP (FOF 307-406)**

- **Mr. Roberts and Mr. Fiffick testified that they met with Dalton Tresvant, a staffer for Congressman Clyburn.**
- **Mr. Roberts received a draft map of District 6 from Mr. Tresvant.**
- **The Clyburn Map maintained splits in all of the same counties involving District 6 as the Benchmark Plan and split Jasper County.**
- **Mr. Roberts used the Clyburn Map to draw the Milk Plan, which became the basis of the Senate Staff Plan and the Enacted Plan.**
- **Notably, Plaintiffs never deposed or called Mr. Tresvant or Congressman Clyburn to contradict Mr. Roberts's testimony.**

## PLAINTIFFS MISREPRESENT THE RECORD REGARDING THE CLYBURN MAP (PART 1)

- **Mr. Roberts allegedly said that Congressman Clyburn had “very little” input at November 29, 2021 hearing (Pls.’ FOF 605).**
  - **The transcript is incorrect: that statement was made by Mr. Fiffick, not Mr. Roberts (SX 239 27:00-28:00).**
  - **Mr. Fiffick’s statement was that Congressman Wilson—*not Mr. Tresvant*—had “very little” input on the map (SX 239 27:00-28:00).**

## **PLAINTIFFS MISREPRESENT THE RECORD REGARDING THE CLYBURN MAP (PART 2)**

- **Mr. Fiffick could not remember whether Mr. Tresvant provided a map or made certain requests (Pls.' FOF 606).**
  - **Mr. Fiffick's memory does not override Mr. Roberts's memory.**
  - **The Senate Defendants produced the Clyburn Map to Plaintiffs in discovery—but Plaintiffs *never* asked any deponents about it.**

## **PLAINTIFFS MISREPRESENT THE RECORD REGARDING THE CLYBURN MAP (PART 3)**

- **Other legislators and staff were unaware of Clyburn Map (Pls.' FOF 607-609).**
  - Only Mr. Roberts and Mr. Fiffick met with Mr. Tresvant, and only Mr. Roberts drew Congressional maps.
- **Mr. Terreni allegedly testified that the team “put . . . aside” the Clyburn Map (Pls.' FOF 610).**
  - That was testimony about the NRRT Maps.
  - Terreni: “[W]e took Congressman Clyburn’s ideas under advisement from Dalton.” Terreni Dep. 111:19-21.

## **PLAINTIFFS MISREPRESENT THE RECORD REGARDING THE CLYBURN MAP (PART 4)**

- **The Milk Plan and the Enacted Plan have differences (Pls.' FOF 610-611).**
  - **Mr. Roberts made other changes and accommodated other requests in drawing the Enacted Plan.**
- **Mr. Roberts never followed up with Mr. Tresvant (Pls.' FOF 612).**
  - **Communications with Mr. Tresvant were handled by the chief of staff, Mr. Fiffick, who sent Mr. Tresvant a subsequent text (SX 120).**

## **PLAINTIFFS MISREPRESENT THE RECORD**

### **PLAINTIFFS' MISREPRESENTATION #2**

# **POLITICS**

## THE GENERAL ASSEMBLY'S POLITICAL GOAL WAS CONTEMPORANEOUS AND WELL KNOWN (FOF 590-606)

- “Politics [is] inseparable from districting.” *Gaffney*, 412 U.S. at 753.
- “Voting behavior,” “political beliefs,” and “political” communities and data are all mentioned in the Guidelines.
- Mr. Roberts, Senator Campsen, and Senator Massey all confirmed that the Enacted Plan was drawn based on politics.
- Partisan analysis reports were released publicly.
- “Trump number” was provided in hearings and on the floor.
- Senator Rankin stated that voters in West Ashley were moved into District 6 because they are Democrats.

## THE GENERAL ASSEMBLY'S POLITICAL GOAL WAS CONTEMPORANEOUS AND WELL KNOWN (FOF 590-606)

- Opponents attacked the Senate Staff Plan and the Enacted Plan on “partisan” and “political” grounds.
  - Former Congressman Cunningham (FOF 429-436, 603)
  - Senator Bright Matthews (FOF 604-609)
  - Senator Kimpson (FOF 610-614)
  - Members of the public (FOF 615-616)
- Senator Bright Matthews disclaimed allegation of racial gerrymandering on the Senate floor (FOF 604-609).



## **PLAINTIFFS MISREPRESENT THE RECORD ON POLITICS (PART 1) (PLS.' FOF 614-628)**

- **Senator Campsen denied that the Enacted Plan is a “partisan gerrymander” (Pls.' FOF 615(a)).**
  - **Senator Campsen explained that “partisan gerrymandering” is a legal term and that his denial is consistent with the use of politics in the Enacted Plan (FOF 600-601).**
  - **As Senator Campsen explained, the Enacted Plan is not a partisan gerrymander because it does not subordinate all other traditional districting principles.**
  - **Senator Campsen cited “Trump number” on the Senate floor (FOF 599).**

## **PLAINTIFFS MISREPRESENT THE RECORD ON POLITICS (PART 2) (PLS.' FOF 550-551, 614-628)**

- **Senator Campsen allegedly “assumed that anyone who supported Senate Amendment 2 was a Democrat” (Pls.' FOF 550-551).**
  - **Senator Campsen received a Beaufort County Democratic Party email directing its members how to testify on the morning of January 13 (SX 112), *before* the Subcommittee hearing that day and the “January 17” date Plaintiffs claim (Pls.' FOF 551).**
  - **Moreover, the Democratic Party was well organized: individuals whose testimony Plaintiffs cite are well-known Democrats (Pls.' FOF 419-423 (Quirk-Garvan, Quick, Parnell, Farr, Palmer)).**

## **PLAINTIFFS MISREPRESENT THE RECORD ON POLITICS (PART 3) (PLS.' FOF 614-628)**

- **Legislators and staffers said politics did not play a role or that they were not instructed to use politics (Pls.' FOF 616(b)-618(g)).**
  - **Those statements say nothing about how map was drawn or the factors that drove the key decisionmakers.**
- **Lynn Teague never heard anyone discuss politics (Pls.' FOF 618(h)).**
  - **Ms. Teague was not in the map room and has no knowledge of how Enacted Plan was drawn.**
  - **Other opponents alleged politics in the Enacted Plan.**

## **PLAINTIFFS MISREPRESENT THE RECORD ON POLITICS (PART 4) (PLS.' FOF 614-628)**

- **Partisanship is not mentioned in the Guidelines (Pls.' FOF 621-622).**
  - House Guidelines recognize communities of interest around “political beliefs” and “voting behavior” (PX 175).
  - Senate Guidelines recognize “political” communities and information (SX 3).
- **Plaintiffs’ experts rejected politics defense (Pls.' FOF 625).**
  - Plaintiffs’ expert analyses are incomplete and unconvincing.

**PLAINTIFFS MISREPRESENT THE RECORD**

**PLAINTIFFS' MISREPRESENTATION #3**

**CORE PRESERVATION**

## PLAINTIFFS MISREPRESENT THE RECORD ON CORE RETENTION (PART 1) (PLS.' FOF 629-640)

- **Core preservation is a *post hoc* justification raised on January 19, 2022 (PLs.' FOF 630).**
  - Even on Plaintiffs' version of events, this justification was offered prior to enactment on January 20, 2022 (PLs. FOF 630).
  - “Minimal change” and “least change” were themes throughout the legislative process.
  - Dr. Ruoff agreed with Mr. Roberts at the November 29, 2021 that the Senate Staff Plan was “a least-change map” (FOF 427).

## **PLAINTIFFS MISREPRESENT THE RECORD ON CORE RETENTION (PART 2) (PLS.' FOF 629-640)**

- **Senators Campsen and Massey “overstated the core retention in District 6” (Pls.' FOF 631).**
  - **Senators Campsen and Massey read off a document provided by staff.**
  - **The accurate figure was provided to all senators on the floor.**
  - **The accurate figure still outperforms all alternatives.**
  - **Any discrepancy did not change any legislator’s vote.**
  - **Plaintiffs did not ask Senators Campsen and Massey about this at trial.**

## **PLAINTIFFS MISREPRESENT THE RECORD ON CORE RETENTION (PART 3) (PLS.' FOF 629-640)**

- **Other legislators did not recall discussions of core retention (Pls.' FOF 637-638).**
  - **Those statements say nothing about how the map was drawn or the factors that drove the key decisionmakers.**
- **Plaintiffs' experts rejected core preservation defense (Pls.' FOF 634-635, 639).**
  - **Plaintiffs' expert analyses are incomplete and unconvincing.**



**PLAINTIFFS MISREPRESENT THE RECORD**

**PLAINTIFFS' MISREPRESENTATION #4**

**ALLEGED RACIAL INTENT**

## PLAINTIFFS MISREPRESENT THE RECORD ON ALLEGED RACIAL INTENT (PART 1)

- **Legislative record “shows” that the General Assembly was “aware that the Enacted Map irrationally cracked Black communities in Charleston” (Pls.’ FOF 197-207).**
  - **Allegations of the Enacted Plan’s opponents are not proof (COL 229).**
  - **Plaintiffs’ counsel drafted the talking points for NAACP members and even testified themselves at hearings to manufacture the record for this lawsuit.**
  - **Senate staff had determined that former Congressman Cunningham’s cracking allegations were false (FOF 443-448).**
  - **The objective proof demonstrates that there is no cracking, including in Charleston (FOF 564-589).**

## PLAINTIFFS MISREPRESENT THE RECORD ON ALLEGED RACIAL INTENT (PART 2)

- **“Legislative Defendants and their staff considered race when drawing and evaluating the Enacted Plan” (Pls.’ FOF 284-286, 307, 310, 311).**
  - Mr. Roberts, Senator Campsen, and others all testified that they did not use race or BVAP to draw or choose maps or lines.
  - Mr. Roberts looked at race data in past mapdrawings (Pls.’ FOF 316) to comply with now-inoperative Section 5 (10.12 PM Tr. 82:1-13).
  - Test is whether legislators used race to draw lines in a way that predominated or discriminated. *Cooper*, 137 S. Ct. at 1463-1464; *Feeney*, 442 U.S. at 279.

## PLAINTIFFS MISREPRESENT THE RECORD ON ALLEGED RACIAL INTENT (PART 3)

- Legislators are “generally aware of” race and racial composition of the areas they represent (Pls.’ FOF 287-298).
  - Mere awareness of race is not racial predominance or discriminatory intent. *Feeney*, 442 U.S. at 279.
- Mr. Roberts “acknowledged” that the changes in Charleston “followed the migration of African Americans” (Pls.’ FOF 144).
  - Mr. Roberts “ha[s]n’t studied the migration” and took the Court’s “word for it.” 10.12 PM Tr. 87:1-3.

## **PLAINTIFFS MISREPRESENT THE RECORD ON ALLEGED RACIAL INTENT (PART 4)**

- **Senator Campsen’s testimony that he did not consider race is “incredible.” (Pls.’ FOF 299- 305).**
  - **Every witness confirmed Senator Campsen did not want to know racial numbers during mapdrawing. Plaintiffs even concede he didn’t (Pls.’ FOF 300).**
  - **Senator Campsen first looked at BVAP numbers “for the floor debate” because he had “been accused of taking race into account when [he] hadn’t” and had to “defend” himself. Tr. 125:17-19 (Campsen, Oct. 13 PM).**

## PLAINTIFFS MISREPRESENT THE RECORD ON ALLEGED RACIAL INTENT (PART 5)

- **Racial data was available to Senate staff in Maptitude and to senators in reports (Pls.' FOF 306-321).**
  - User must scroll to racial data or activate the shading function in Maptitude, and Mr. Roberts did neither while drawing maps (FOF 331).
  - Reports showing racial data were prepared at the touch of a button in Maptitude for all plans, not only the NRRT plans as Plaintiffs suggest (Pls.' FOF 450).
  - Mere *availability* of racial data does not establish *use* of race to draw lines, much less predominance or discrimination. *Cooper*, 137 S. Ct. at 1463-1464; *Feeney*, 442 U.S. at 279.

## PLAINTIFFS MISREPRESENT THE RECORD ON ALLEGED RACIAL INTENT (PART 6)

- **The Enacted Plan reduces District 6's BVAP (52.5% to 46.9%) but does not increase black electoral opportunity elsewhere (Pls.' FOF 71-82).**
  - There were no “more Black voters . . . available to be allocated to neighboring districts” (FOF 75).
    - The statewide BVAP % decreased in the 2020 Census.
    - Benchmark District 6 with 52.5% BVAP was 11.59% underpopulated.
    - The Enacted Plan *increases* District 6's *total* BVAP number compared to the Benchmark Plan (SX 28b & 29g).
    - Plaintiffs' alternatives increase District 6's *total* BVAP number even more than the Enacted Plan (SX 31g, 34c, 35b, 68g).

## **PLAINTIFFS MISREPRESENT THE RECORD ON ALLEGED RACIAL INTENT (PART 7)**

- **The General Assembly allegedly used “private . . . criteria” (Pls.’ FOF 391-415).**
  - The Guidelines did not tell the map drawer where to draw lines or dictate all decisions in the Enacted Plan (FOF 355).
  - The requests honored by the map drawer were not criteria.
  - Respecting those requests was not an intentional use of race.
  - Plaintiffs seek changes to the map not in the Guidelines, such as unsplitting Charleston County.



## **PLAINTIFFS MISREPRESENT THE RECORD ON ALLEGED RACIAL INTENT (PART 8)**

- **The General Assembly allegedly disregarded public testimony (Pls.' FOF 416-440).**
  - **The General Assembly followed public input, including on communities of interest (FOF 428, 500-504, 506-507, 512, 517).**
  - **The Enacted Plan involves tradeoffs, including in incorporating public input, that are within the province of the General Assembly (COL 230); *Miller*, 515 U.S. at 915.**

## **PLAINTIFFS MISREPRESENT THE RECORD ON ALLEGED RACIAL INTENT (PART 9)**

- **The map drawer allegedly relied upon the NRRT Maps (Pls.' FOF 441-471).**
  - **Mr. Roberts turned to Congressional redistricting in “mid-November” (FOF 317), not on “November 19” (Pls.' FOF 405).**
  - **The Senate staff reviewed only briefly—and did not use or rely upon—the NRRT maps (FOF 356-371).**
  - **Jessamine Map was based on Senate Staff Plan (FOF 362).**
  - **The NRRT maps were drawn using political data and without any racial data (FOF 367).**

## PLAINTIFFS MISREPRESENT THE RECORD ON ALLEGED RACIAL INTENT (PART 10)

- **Senate Defendants’ decision not to conduct racially polarized voting analysis is “willful blindness” (Pls.’ FOF 659).**
  - The Senate had no legal obligation to conduct a racially polarized voting analysis (COL 155-161).
  - The Senate’s decision not to conduct a racially polarized voting analysis does not establish racial predominance or discrimination (COL 155-161).
  - Conducting a racially polarized voting analysis would have interjected *more* race-consciousness into redistricting.

## PLAINTIFFS' CLAIMS FAIL ON THE RECORD EVIDENCE

To rule for Plaintiffs, the Court would have to:

1. Ignore the presumption of good faith
2. Ignore the undisputed evidence of compliance with traditional principles
3. Jettison *Backus* – twice!
  - Reject Benchmark Lines, which comport with traditional principles
  - Embrace incomplete and unconvincing putative expert analyses
4. Conclude that Roberts, Campsen, Bamberg, and others all lied
5. Adopt Plaintiffs' misrepresentations of the record
6. Hold that *not* drawing lines based on race is racial *discrimination*

## WHAT SHOULD THE COURT DO?

**The Court Should Enter Judgment For  
Defendants.**